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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) Our Case No.: 8285/669	
I hereby certify that this correspondence is being electronically deposited with the United States Patent and Trademark Office through the Electronic Filing System, on the below date:  <div style="text-align: center;"> <u>December 10, 2009</u>            Date of Deposit   <u>Scott W. Brim (Reg. No. 51,500)</u>            Name of Applicant, assignee or            Registered Representative   <u>/Scott W. Brim/</u>            _____            Signature   <u>December 10, 2009</u>            Date of Signature         </div>		Application Number: 10/767,411	Filed: January 27, 2004
		First Named Inventor: Gloria Jean Navarre et al.	
		For: SYSTEM AND METHOD FOR EXECUTING A REQUEST FROM A CLIENT APPLICATION	
		Art Unit: 2169  Conf. No.: 2880	Examiner: Kim, Paul
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.  This request is being filed with a Notice of Appeal.  The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.  I am the <input type="checkbox"/> applicant/inventor.  <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)  <input type="checkbox"/> attorney or agent of record. Registration number _____  <input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. <u>51,500</u> .  Note: Signatures of all inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.*  <input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.			
		<u>/Scott W. Brim/</u> Signature  <u>Scott W. Brim</u> Typed or Printed Name  <u>312-321-4200</u> Telephone number  <u>December 10, 2009</u> Date	

**CERTIFICATE OF ELECTRONIC TRANSMISSION**

I hereby certify that this correspondence is being filed electronically with the U.S. Patent and Trademark Office on December 10, 2009.

Scott W. Brim, Reg. No. 51,500  
Name of Applicant, Assignee or  
Registered Representative

/Scott W. Brim                      December 10, 2009  
Signature                              Date

Our Case No. 8285/669

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:	)	
	)	
Gloria Jean Navarre et al.	)	
Serial No.: 10/767,411	)	Examiner: Kim, Paul
	)	
Filing Date: January 27, 2004	)	Group Art Unit No.: 2169
	)	
For: System and Method for Executing	)	Confirmation No.: 2880
a Request from a Client	)	
Application	)	

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandra, VA 22313-1450

Dear Sir:

Applicants request review of the final rejection in the above-identified application.  
No amendments are being filed with this request.

This request is being filed with a notice of appeal

The review is requested for the reasons stated on the attached sheets. No more than five (5) pages are provided.

## REMARKS

### I. Introduction

Claims 1-20 are pending in the application. In the Office Action dated Sept. 30, 2009, the Examiner rejected claims 1-19 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over U.S. Pat. No. 6,442,611; rejected claims 1-4, 6-8, 10-14, 16-18, and 20 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 5,634,127 ("Cloud") in view of U.S. Pat. No. 5,051,947 ("Messenger") and U.S. Pat. No. 5,659,727 ("Veli"); rejected claims 5 and 15 under 35 U.S.C. § 103(a) as being unpatentable over Cloud in view of Messenger and what the Examiner asserts is widely-known; and rejected claims 9 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Cloud in view of Messenger and U.S. Pat. No. 5,819,092 ("Ferguson"). Applicants request review of the final rejections.

### II. Double Patenting Rejection

Claims 1-19 were rejected under the judicially created doctrine of double patenting as being unpatentable over U.S. Pat. No. 6,442,611. Upon a determination that the claims are allowable absent the double patenting rejection, Applicants will file a terminal disclaimer to overcome the double patenting rejection. However, the submission of a terminal disclaimer should not be interpreted as an agreement with, or acquiesce to, the double patenting rejection.

### III. The Proposed Combinations Do Not Render Claims 1 and 20 Unpatentable

Independent claims 1 and 20 recite transmitting a set of data access transactions to respective applications, wherein at least some of the set of data access transactions comprise a first optional data item, and wherein the respective applications process the set of data access transactions ***even when the respective applications do not recognize the first optional data item.*** In the proposed combinations of Cloud, Messenger, and Veli, the Examiner asserts that Veli teaches the respective applications processing the set of data access transactions even when the respective applications do not recognize the first optional data item. Applicants respectfully disagree.

Veli is directed to a computer program product and program storage device for encoding, storing, and retrieving hierarchical data processing information for a computer system. In the Office Action, the Examiner cites Col. 15, lines 57-62 as teaching respective applications processing the set of data access transactions even when the respective applications do not recognize the first optional data item. Col. 15, lines 57-62 of Veli states:

An Ignorable attribute specifies that a parameter can be ignored by the receiver of a command if the receiver does not provide the supported request. The parameter can be sent optionally to all senders. **The parameter codepoint must be recognized by all receivers.** The receiver can ignore the parameter value. (Emphasis Added)

As shown above, the cited portion of Veli does not teach that a receiver does not recognize a parameter (the purported optional data item). In fact, the cited portion of Veli explicitly states that a receiver **must** recognize an attribute of the parameter, the parameter codepoint. If the receiver recognizes that the parameter is ignorable due to the parameter codepoint, the receiver may then ignore the value of the parameter if it does not provide support for a request. There is no teaching in the cited portion of Veli of the system not recognizing a first optional data item as recited in claims 1 and 20.

Further, Applicants maintain that a receiver simply **ignoring** a value of a parameter is not the same as a receiver **not recognizing** a parameter. In the final Office Action, the Examiner asserts that one skilled in the art would interpret an application not supporting a parameter as an application not recognizing a parameter. (See Office Action dated Sept. 30, 2009, pages 7-8). Applicants respectfully disagree. An application may recognize a parameter without supporting that parameter. As evidenced by even the portion cited of Veli above, the application recognizes an attribute of the of the parameter identifying that the parameter may be ignored and then ignores the value of the parameter if the application does not support a request. One skilled in the art would not interpret an application not supporting a parameter to be the same as an application not recognizing a parameter.

The proposed combinations of Cloud, Messenger, and Veli fail to teach a set of data access transactions to respective applications, wherein at least some of the set of data access transactions comprise a first optional data item, and wherein the respective applications process the set of data access transactions **even when the respective**

***applications do not recognize the first optional data item.*** For at least this reason, the combinations of Cloud, Messenger, Veli, and Ferguson do not render unpatentable independent claims 1 and 20, or any claim that depends on claim 1.

#### **IV. The Proposed Combinations Do Not Render Claim 10 Unpatentable**

Independent claim 10 recites a system wherein a plurality of applications is operative to process a set of data access transactions even when the plurality of applications do not recognize a first option data item. As discussed above in conjunction with claims 1 and 20, the proposed combinations of Cloud, Messenger, and Veli fail to teach this element. The Examiner has also not asserted that Ferguson teaches a system wherein a plurality of applications is operative to process a set of data access transactions even when the plurality of applications do not recognize a first option data item. For at least this reason, the proposed combinations of Cloud, Messenger, Veli, and Ferguson necessarily do not render unpatentable independent claim 10 or any claim that depends on claim 10.

#### **V. Conclusion**

In view of the foregoing remarks, Applicants submit that the pending claims are in condition for allowance. Accordingly, Applicants request review the final rejections.

Respectfully submitted,

/Scott W. Brim/

Scott W. Brim

Registration No. 51,500

Attorney for Applicants

BRINKS HOFER GILSON & LIONE  
P.O. BOX 10395  
CHICAGO, ILLINOIS 60610  
(312) 321-4200